Supreme Court, U.S.
FILED
JAN 4 1989
JOSEPH F. SPANIOL, JR.
CLERK

NO. 88-925

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1988

ALONZIA HARRIS, CHARLES DAVIS,
AND MAHALIA KEY,

Petitioners,

V.

ISRAELITE BIBLE CLASS, INC.,
AN ILLINOIS NOT-FOR-PROFIT
CORPORATION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE APPELLATE COURT OF ILLINOIS,
FIFTH JUDICIAL DISTRICT

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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I.

ISSUES PRESENTED FOR REVIEW

A. WHETHER THE COURT LACKS JURISDICTION ON THE PETITION FOR WRIT OF CERTIORARI DUE TO PETITIONERS' UNTIMELY FILING?

B. WHETHER THE PETITION FOR WRIT OF CERTIORARI FILED BY PETITIONERS IN THEIR CAPACITY AS INDIVIDUALS ONLY IS BARRED BY THE DOCTRINE OF RES JUDICATA?

C. WHETHER THE ADJUDICATION OF PROPERTY RIGHTS BY THE TRIAL COURT IN ACCORDANCE WITH "NEUTRAL PRINCIPLES" WAS CONSISTENT WITH PETITIONERS' FREE EXERCISE OF RELIGION AS GUARANTEED BY THE FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES?

D. WHETHER THE DENIAL OF PETITIONER'S REQUEST FOR APPOINTMENT OF COUNSEL COMPORTED WITH FUNDAMENTAL RIGHT OF DUE PROCESS AS GUARANTEED BY THE FIFTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES?

II.

PARTIES TO THE PROCEEDING

PETITIONERS:

ALONZIA HARRIS

CHARLES DAVIS

MAHALIA KEY

In their individual capacities only.

No Petition for Writ of Certiorari has been filed on behalf of The First Church of Israel, Inc., an Illinois Not-For-Profit Corporation nor on behalf of The First Church of Israel, an Unincorporated Association.

RESPONDENT:

ISRAELITE BIBLE CLASS, INC.,
AN ILLINOIS NOT-FOR-PROFIT
CORPORATION

III.

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IV.

CITATION OF LOWER COURT DECISIONS

The Pending Petition seeks issuance of a Writ of Certiorari to the Appellate Court of Illinois, First Judicial District. Petitioner's Appeal to the Appellate Court of Illinois was dismissed without formal opinion as provided in Illinois Supreme Court Rule 23. Petitioner's Motion For Leave To Appeal To the Illinois Supreme Court was similarly denied without formal opinion. There are, therefore, no reported decisions or opinions issued in the Courts below.

V.

JURISDICTIONAL STATEMENT

A. DATE OF ORDER:

On August 11, 1987, the Appellate Court of Illinois, Fifth Judicial District, entered an Order providing in pertinent part, for the dismissal of the Appeal of The First Church of Israel, an Unincorporated Association and The First Church of Israel, Inc., an Illinois Not-For-Profit Corporation. That Order did not dispose of the issues raised on Appeal as to all parties. On March 9, 1988, the Appellate Court of Illinois entered an Order dismissing the Appeal as to all remaining parties.

B. PETITION FOR LEAVE TO APPEAL TO ILLINOIS SUPREME COURT:

Petitioners failed to timely file their Petition For Leave to Appeal

to the Illinois Supreme Court. The Petitioner's filed a Motion For Leave to Appeal Instanter which was denied by the Illinois Supreme Court by Order entered June 6, 1988.

C. **MOTION FOR REHEARING:**

Through counsel of record, Larry Beard, Petitioners filed a Motion For Reconsideration which was denied by Order of the Illinois Supreme Court on July 5, 1988. Without authority of Rule the Petitioners thereafter filed a duplicitous Motion To Reconsider which was summarily denied by Order of the Illinois Supreme Court entered August 1, 1988.

D. **STATUTES CONFERRING JURISDICTION:**

The statutory provisions conferring jurisdiction on this court to review the decision in question by Writ of Certiorari is 28 U.S.C., Section 1257(3). The statute establishing the jurisdictional time within which the Petition For

Writ Of Certiorari was to have been filed is 28 U.S.C., Section 2101 (c). Supreme Court Rule 20.4 defines when the time commences for filing a Petition For Writ Of Certiorari.

E. The Court is without jurisdiction because the Petition For Writ of Certiorari was effectively filed on October 28, 1988, being more than ninety (90) days following July 5, 1988, the date the Illinois Supreme Court Court denied the Petitioner's Motion For Rehearing. Respondent contends that the time for filing a Petition For Writ Of Certiorari is not tolled by successive repetitive Motions for Reconsideration.

VI.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

U. S. CONSTITUTION - AMENDMENT I

> Congress shall make no law respecting an establishing of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U. S. CONSTITUTION - AMENDMENT V

> No person shall be ... deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U. S. CONSTITUTION - AMENDMENT VI

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, ... and to have the Assistance of Counsel for his defense.

U. S. CONSTITUTION - AMENDMENT XIV

> Section 1. ...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S.C. SECTION 1257 (3)

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

...

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

28 U.S.C. SECTION 2101(c)

...

(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

SUPREME COURT RULE 20.4

4. The time for filing a petition for writ of certiorari runs from the date the judgment or decree sought to be reviewed is rendered, and not from the date of the issuance of the mandate (or its equivalent under local practice). However, if a petition for rehearing is timely filed by any party in the case, the time for filing the petition for writ of certiorari for all parties (whether or not they requested rehearing or joined in the petition for rehearing) runs from the date of the denial of rehearing or of the entry of a subsequent judgment entered on the rehearing.

ILLINOIS SUPREME COURT RULE 33 (7)

7. The Clerk shall not accept for filing any document presented in a form not in compliance with this Rule, but shall return it indicating to the defaulting party wherein he has failed to comply; the filing, however, shall not thereby be deemed untimely provided that new and proper copies are promptly substituted. If the Court shall find that the provisions of this Rule have not been adhered to, it may impose, in its discretion, appropriate sanctions including but not limited to dismissal of the action, imposition of costs, or disciplinary sanction upon counsel. See also Rule 38 respecting oral argument.

VII

STATEMENT OF CASE

In the beginning, Lucius Casey, Sr. organized and incorporated The Israelite Bible Class, Inc. as a Not-For-Profit Corporation, on March 11, 1953. (R. 117). The corporation was strictly a congregational entity conceived and organized for religious purposes. The Israelite Bible Class, Inc. was not associated with any other general denomination or ecclesiastical entity. Originally, the congregation was centered in the Chicago vicinity; however, shortly after formal incorporation the group began to purchase various parcels of property in Pulaski County, Illinois, which eventually became known as the "Israelite Farm". (R. 207).

In 1972 a meeting of the corporate directors and membership of The Israelite

Bible Class was held in Chicago, Illinois, at which time it was decided to change the name of The Israelite Bible Class, Inc. to The First Church of Israel (R. 78; R. 176-177). Following the adoption of the new name, and more particularly on or about March 18, 1972, the corporate authorities of The Israelite Bible Class, Inc. executed a corporate warranty deed conveying the corporation's right, title and interest in the farm to seven (7) named individuals as Trustees of The First Church of Israel, an Unincorporated Association (Plaintiff's Exhibit #5). The corporate charter of The Israelite Bible Class, Inc. was then allowed to lapse for failure to file annual reports as required by law. (R. 6; Plaintiff's Exhibit #3). Though the name of the congregation was changed, the membership, corporate directors, by-laws, beliefs, and tenets

remained constant. (R. 120; R. 175-176; R. 198).

Subsequent to the name change during 1972, membership in the Unincorporated Association then known as The First Church of Israel grew but new members began to infiltrate the organization not having complied with the applicable by-laws. Defendants, Charles Davis and Mahalia Key, were two such members. (R. 173; 199; 139-140). In 1978, a meeting of the membership was held on the Israelite Farm to address the divergence from the principles and philosophies of the original organization. At the meeting, the body politic of the congregation voted overwhelmingly to revive the name and existence of the original congregation and to retake the name of The Israelite Bible Class, Inc. (R. 132-133; R. 165-166; R. 176-179). Nearly all the congregational members of the association

elected and consented to the reversion back to the original organizational structure and further voted to have the title of the real estate formally revested in the corporation. (R. 132-133; R. 165-166; R. 176-179).

Pursuant to the decision of the congregational membership, a warranty deed was executed on July 16, 1978, by six (6) of the Trustees reconveying the farm property back into the name of The Israelite Bible Class, Inc. (Plaintiff's Exhibit #2). The remaining named Trustee, Lucius Casey, Jr., reconveyed his title interest in the property to the corporation by virtue of a deed executed on January 18, 1981. (Plaintiff's Exhibit #6). At the time of the conveyance executed on July 16, 1978, The Israelite Bible Class, Inc. had not been reinstated and restored to its prior corporate standing. This was accomplished by entry of

a Court Order in Cook County vacating the judicial Decree of Dissolution (Plaintiff's Exhibit #3), and by the subsequent issuance of a certificate of reinstatement by the Illinois Secretary of State. (C 16 - Exhibit B).

On July 6, 1978, and prior to the reconveyance to The Israelite Bible Class, Inc., certain dissident members of the congregation procured a charter of incorporation under the Illinois Not-For-Profit Corporation Act for an entity known as The First Church of Israel, Inc. (R. 9). The congregational members who did not revert back to the original corporation became members in the newly created First Church of Israel, Incorporated. (R. 30). Subsequent to incorporation, the Unincorporated Association known as The First Church of Israel ceased to have an independent, autonomous existence. (R. 30; R. 35; R. 143-150).

In an effort to clear apparent conflicts of title, The Israelite Bible Class, Inc. instituted Cause 78-CH-5 in the Circuit Court, First Judicial Circuit, Pulaski County, Illinois. On March 1, 1982, an Order was entered in said cause pursuant the agreement and stipulation of the parties establishing, in pertinent part, that the individuals known as Mahalia Key, Alonzo Harris, and Charles Davis had no claim, as individuals in the Israelite Farm. (R. 9-10). That Order also established that The First Church of Israel, Inc., as a corporate entity, had no title or claim to the property. (R. 9-10). Due to lack of jurisdiction over each alleged member of the Unincorporated Association, the prior Order, however, reserved ruling on any claim the named Defendants may have been able to raise by virtue of membership in The First Church of Israel, an Unincorporated Association. (R. 9-10).

The trial court found superior title in Plaintiff and granted relief sounding in Ejectment against all named Defendants. (C. 87-94). An appeal to the Appellate Court of Illinois, Fifth Judicial District, was taken by Alonzo Harris, Charles Davis, and Mahalia Key as Trustees of The First Church of Israel, an Unincorporated Association, and the First Church of Israel, Inc., an Illinois Not-For-Profit Corporation.

On August 11, 1987, the Appellate Court of Illinois, Fifth Judicial District, entered an Order Dismissing the Appeal of The First Church of Israel, an Unincorporated Association, and The First Church of Israel, Inc., an Illinois Not-For-Profit Corporation, due to an absence of jurisdiction based on the failure of those entities to file an effective Notice of Appeal. (A-19). The Notice of Appeal filed on behalf of

the Corporation and Association was executed by Alonzo Harris, Charles Davis, and Mahalia Key, none of whom were duly admitted to practice law in the State of Illinois, only in their capacities as Trustees of The First Church of Israel. Finding the Notice of Appeal as filed to be violative of the State's prohibition against the uanauthorized practice of law, the Court deemed the Notice nullity. Subsequently on March 9, 1988, the Illinois Appeallate Court, Fifth Judicial District dismissed the Appeal as to the remaining individual Defendants, Alonzo Harris, Charles Davis, and Mahalia Key, because no proper Notice was filed on their individual behalfs.

Although represented by counsel the Defendants failed to timely file a Petition For Leave To Appeal to the Illinois Supreme Court. On June 6, 1988, the Illinois Supreme Court entered an Order

denying the Defendants' Motion For Leave to File Petition For Leave to Appeal Instanter. Through their attorney, Larry Beard, the Defendants then filed a Motion To Reconsider Motion For Leave to File Petition Instanter which was denied on July 5, 1988. (A-53).

Although not countenanced by rule, on July 19, 1988, the Defendants refiled their Motion To Reconsider in a "Pro Se" capacity. The repetitive "Pro Se" Motion was summarily denied by Order entered August 2, 1988, which Order stayed issuacne of the mandate of the Appellate Court pending resolution of Defendants' application to the United States Supreme Court for a Writ of Certiorari. (A-56).

Effective October 28, 1988, the Defendants filed in the United States Supreme Court, a Petition For Writ of Certiorari to the Appellate Court of Illinois, Fifth Judicial District.

VIII.

ARGUMENT

(A)

THE COURT LACKS JURISDICTION ON THE PETITION FOR WRIT OF CERTIORARI DUE TO PETITIONERS' UNTIMELY FILING

The final Order which Petitioners' seek to review by Writ of Certiorari was entered by the Appellate Court of Illinois, Fifth Judicial District on March 9, 1988 (A-44). The Appellate Court then entered an Order on April 5, 1988, denying Petitioners' request for rehearing. (A-51).

The Petitioners failed to file a Petition for Leave to Appeal to the Illinois Supreme Court within the time prescribed by Illinois Supreme Court Rule

315. On June 5, 1988, the Illinois Supreme Court entered an Order denying Petitioners' Motion For Leave To File Petition For Leave to Appeal Instanter. (A-52). Through counsel of record, Larry Beard, the Petitioners filed a Petition to Reconsider which was duly denied by the Illinois Supreme Court on July 5, 1988. (A-53).

Subsequent to entry of the Order denying their Petition to Reconsider the Petitioners, pro se, filed a repetitive Motion to Reconsider concurrent with a Motion to Withdraw filed by their counsel of record. The second Motion to Reconsider was summarily denied by the Illinois Supreme Court by Order entered August 2, 1988. (A-56).

Neither the Illinois Code of Civil Procedure nor the Illinois Supreme Court Rules countenance the filing of repetitive Motions to Reconsider. Indeed, in the

case of Sears v. Sears, 85 Ill.2d 253, 422 N.E.2d 610, 52 Ill.Dec. 608 (1981), the Illinois Supreme Court condemned the practice of filing repetitive post-trial motions in the trial court:

> There is no provision in the Civil Practice Act or the Supreme Court Rules which permits a losing litigant to return to the trial court indefinitely, hoping for a change of heart or a more sympathetic judge...There must be finality, a time when the case in the trial court is really over and the loser must appeal or give up. Successive post judgment motions interfere with policy and justice is not served by permitting the losing party to string out his attack on a judgment over a period of months, one argument at a time, or to make the first motion a rehearsal for the real thing next month. (52 Ill.Dec. 610-611).

In the present case Petitioners seek review by Writ of Certiorari pursuant to 28 U.S.C., Section 1257 (3). The time parameters for filing a Petition For Writ Of Certiorari are specified in 28 U.S.C. Section 2101 (c):

> Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court shall be taken or applied for within ninety days after the entry of such judgment or decree. A Justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

Supreme Court Rule 20.4 demarcates when the time for filing a Petition For Writ of Certiorari commences:

> The time for filing a Petition For Writ Of Certiorari runs from the date the judgment or decree sought to be reviewed is rendered, and not from the date of the issuance of the mandate (or its equivalent under local practice). However, if a Petition for Rehearing is timely filed by any party in the case, the time for filing the Petition For Writ Of Certiorari for all parties (whether they requested rehearing or joined in the Petition for Rehearing) runs from the date of the denial of rehearing or of the entry of a subsequent judgment entered on the rehearing.

The Petitioners cannot unilaterally extend the jurisdictional time for filing a Petition For Writ Of Certiorari by submitting an endless stream of Motions for Rehearing below. The Petition For Writ Of Certiorari was due to be filed ninety (90) days from July 5, 1988. The Petition was not timely filed with the Clerk pursuant to Supreme Court Rule 28.2 on or before October 3, 1988, and, therefore, is jurisdictionally out of time.

(B)

THE PETITION FOR WRIT OF CERTIORARI FILED BY THE PETITIONERS IN THEIR CAPACITY AS INDIVIDUALS ONLY IS BARRED BY THE DOCTRINE OF RES JUDICATA AND CONSIDERATION OF COLLATERAL ESTOPPEL

The case under consideration has a long and tortured history. Each of the present Petitioners was originally a named party Defendant in a quiet title action

entitled PERRY SANKEY, JR. et al. v. LUCIUS CASEY, SR., LUCIUS CASEY, JR., ALONZO HARRIS, CHARLES DAVIS, MAHALIA KEY, AND FIRST CHURCH OF ISRAEL, INC., AN ILLINOIS CORPORATION, 78-CH-5, venued in the Circuit Court, First Judicial Circuit, Pulaski County, Illinois. In that case the individually named Defendants appeared and defended in their individual capacities. They were duly and competently represented by retained counsel. On January 5, 1982, the case was called for bench trial. Through counsel and in open Court, Alonzo Harris, Charles Davis and Mahalia Key, as individuals and the Illinois Not-For-Profit Corporation known as the First Church of Israel, Inc. stipulated and acknowledged that they had no right, title, or interest in the subject real estate except whatever derivative rights they may have enjoyed by virtue of membership in an unincorporated association known as the First Church of Israel.

Based upon judicial admissions of the parties made in open Court, an Order of Dismissal was entered (A-1).

The present action was instituted to determine whether the First Church of Israel, an Unincorporated Association, and the individual Defendants, by virtue of membership in that organization had any proprietory in the real estate.

The Appellate Court of Illinois, Fifth Judicial District, dismissed Petitioners' Appeal due to a defective Notice of Appeal. (A-11). Initially the Appeals of the Corporation and Association were dismissed because the Notice of Appeal was signed only by Alonzo Harris, Mahalia Key and Charles Davis as Trustees. The Appellate Court correctly ruled that as executed on behalf of the corporation and association the Notice of Appeal constituted the unauthorized practice of law and was a nullity. (A-19). Upon further consideration on the merits following full-

briefing and argument the Appellate Court thereafter dismissed the appeal as to the remaining Defendants, Alonzo Harris, Charles Davis, and Mahalia Key, because they filed a Notice of Appeal only in their capacity as Trustees of the Defendant religious organization but not in their individual capacities. (A-44).

On October 28, 1988, the Office of the Clerk of the Supreme Court of the United States received Petitioners' Writ For Certiorari. As originally tendered on behalf of the corporation and association the Petition was rejected by the Clerk because, once again, the individual Defendants persisted in the unauthorized practice of law by attempting to file a Petition on behalf of the corporation and association.

Although Supreme Court Rule 33.7 provides that a document returned by the Clerk for failure to comply with rules governing form may still be deemed timely

filed, it does not authorize extension of the jurisdictional time by the filing of a Petition in contravention of that prohibition against unauthorized practice of law.

Neither the First Church of Israel, an Illinois Not-For-Profit Corporation, nor the First Church of Israel, an Unincorporated Association, are parties to the present proceedings. The sole issue is the claimed proprietary rights of the individual Defendants. The identical parties conclusively determined that issue by consent and stipulation in a prior judicial proceeding. The present Petition is barred by the doctrine of res judicata and consideration of collateral estoppel. Parklane Hosiery Co. v. Shore, 439 US 322, 99 S.Ct. 645, 58 L.Ed 2d 552 (1979).

(C)

THE ADJUDICATION OF PROPERTY RIGHTS BY THE TRIAL COURT IN ACCORDANCE WITH "NEUTRAL PRINCIPLES" WAS CONSISTENT WITH PETITIONERS' FREE EXERCISE OF RELIGION AS GUARANTEED BY THE FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

In Watson v. Jones, 80 US 679, 20 L.Ed 666 (1871) the Court classified questions concerning the rights to property held by ecclesiastical bodies under three general headings: (1) property held in express trust for the teaching, support, or spread of some specific form of religious doctrine belief; (2) properly held by an independent or congregational church, which owes no fealty or obligation to any higher authority; and (3) property held by a hierarchical church. As to hierarchical church organizations

the Watson court ruled that local church organizations could not withdraw from the general church hierarchy, denounce its authority and still retain the use of local church property.

The Watson principle was converted into a constitutional rule in Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church, 344 US 94, St. Ct. 143, 97 L.Ed. 120 (1952). Subsequently, in Presbyterian Church in United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 US 440, 89 S Ct. 601, 21 L.Ed 658 (1969), the Court held that the First Amendment prohibits civil courts from adjudicating competing church property interests on the bases of the Court's interpretation of church doctrine. In essence, the court held that civil courts have no role in determining ecclesiastical questions and that in resolving church property disputes the courts must rely on

"neutral principles" developed for the use in all property disputes.

The trial court below relied solely upon "neutral principles" to adjudicate the competing property interests. (A-3). State statutes, the express language of deeds, church constitutions, charters and by-laws were all scrutinzed. The express findings of fact set forth in the judgment reflect adherence to the "neutral principles" approach and preservation of First Amendment rights of all litigants.

The decision sought to be reviewed does not compel the individual Petitioners to adopt any dogma or practice any religious principles in violation of the First Amendment. The judgment merely requires that those who enjoy the use of church property belong to the church. Petitioners' membership in the congregation is purely volitional. If, however,

they reject membership their privilege to use church property is terminated; all in accord with neutral principles and consistent with First Amendment constraints.

(D)

THE DENIAL OF PETITIONERS' REQUEST FOR APPOINTMENT OF COUNSEL COMPORTED WITH CONSTITUTIONAL GUARANTEES OF DUE PROCESS AND RIGHT TO COUNSEL

The Petitioners proceeded to trial pro se and did an admirable job in their own defense. On appeal the Petitioners made formal request for appointment of counsel which was denied. (A-42). The denial of appointed counsel did not deprive Petitioners of any cognizable constitutional privilege.

By its express terms the Sixth Amendment guarantees a right to counsel only in criminal prosecutions. The case at bar

involved no possibility of criminal sanctions. This case is not a contempt proceeding carrying a potential sanction of incarceration nor does it fall within the purview of any special legislation such as the Civil Rights Act or Habeas Corpus Act wherein the Petitioners may arguably enjoy a statutory right to counsel.

The cases cited and relied upon by Petitioners to establish a deprivation of the right of due process guaranteed by the Fifth Amendment to the United States Constitution are inopposite. None of the cases cited hold that Petitioners are entitled to appointed counsel. Petitioners were afforded due notice and a full and fair opportunity to appear and defend. The Petitioners were afforded their full panoply of constitutional privileges.

IX.

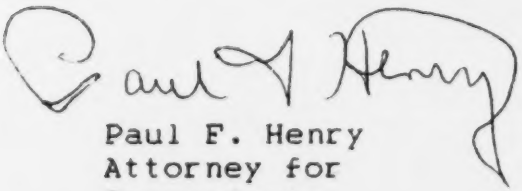
CONCLUSION

The Petition For Writ of Certiorari is jurisdictionally out of time and should be dismissed.

Even if considered substantively the Petition presents no substantial federal question for decision. The Petitioners were afforded all procedural rights guaranteed civil litigants. Most significantly, the property claims of the individual Petitioners are barred by prior judicial proceedings under the doctrine of res judicata.

No compelling reason for review exists. The Petition should be denied.

Respectfully Submitted,



Paul F. Henry
Attorney for
Respondent